

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/004,823
Filing Date: December 07, 2001
Appellant(s): MOODY, JOHN R.

Michael Ferrell
For Appellant

EXAMINER'S ANSWER

This is a correction responsive to a remand due a duplicate sentence on page 2 under the “Grounds of Rejection to be Reviewed on Appeal” and because the section of the objection under 37 C.F.R. was not specified when the objection was withdrawn.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct.

Appellant's brief presents arguments relating to an objection under 37 C.F.R. 1.75(c). This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP § 1002 and § 1201. The objection has been withdrawn further rendering the issue moot.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner.

The rejection of claims 1-10 and 21-22 under 35 U.S.C. § 112 first paragraph.

The rejection to claims 1-10 and 21-22 under 35 U.S.C. § 102 (b) evidenced by Morand.

The rejection to claims 1-5 and 7-10 under 35 U.S.C. § 103(a) evidenced by Schutz et al. (5950863).

The rejection to claims 1-5 and 7-10 under 35 U.S.C. § 103(a) evidenced by Schutz et al. in view of Morand

The rejection to claims 1-10 and 21-22 under 35 U.S.C. § 103(a) evidenced by Frazier et al. (5322186) in view of Morand.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 5, 957,324 Gettelman et al. 09-1999

Evidence relied upon includes pics taken from the restrooms in the Crystal Park 5 restrooms.

Evidence relied upon includes an affidavit attesting to the date of prior use of the towel dispensers in the Crystal Park 5 restrooms.

Evidence relied upon includes an affidavit attesting to measured dimensions of the towel dispensers in the Crystal Park 5 restrooms.

(9) Grounds of Rejection

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The following ground(s) of rejection are applicable to the appealed claims:

Claim(s) 1-10 and 21-22 is/are rejected under 35 U. S. C. 112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant claims an open ended range of "about" 80-90% the transverse length of the towel yet has not specified by what tolerance the "about" extends the range. In claim 3 applicant further attempts to distinguish the length of the slot to "about 85% of the transverse length" without defining how close a tolerance on "about" refers to, i.e. +/- 30%, 20%, 10%. Similar indefinite variable range and tolerances are claimed in claims 4,5, 9, 10, and 21.

Applicant has premised dimensions of the slot upon an extrinsic unclaimed variable-the width of the towel that one happens to select to fill in the container. The determination of whether prior art or infringing devices read on the claims would vary depending upon what arbitrarily selected towel were chosen for placement in the system.

Claims 1-8 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gettelman et al. (5957324) in view of the Bobrick 363 model towel dispenser (bearing a 3/81 copyright date on the interior instruction panel and having been in use in the USPTO Crystal Park 5 restrooms since at least 1999) in which Gettelman et al discloses:

(Re: cl 1) In a gravity feed towel dispenser for dispensing C-fold and interfolded towels having a transverse length, L, through an elongated bottom dispensing aperture having a length of L or greater towel dispenser including means for defining a top portion, a front wall, a back wall and a pair of side walls of towel dispenser, as well as a bottom portion collectively defining an interior for receiving a stack of C-fold or interfolded towels to be dispensed through aperture, bottom portion of towel dispenser defining elongated bottom dispensing aperture (fig 1); an adapter plate (22) for securing to bottom portion of towel dispenser configured to abridge the length of dispensing aperture to (c2 L 24-42)

(Re: cl 6) pivotally secured to the lower portion of gravity-feed towel dispenser (c2 L 47-59 ; fig 4-5)

(Re: cl 7) adapter plate is configured to define a central enlarged portion of the dispensing aperture and two restricted terminal portions of the dispensing aperture each of the portions having a span perpendicular to the length of the dispensing aperture (fig 3)

(Re: cl 21) In a gravity-feed towel dispenser for dispensing C-fold and I-interfolded towels having a transverse length, L, through an elongated bottom dispensing aperture having a length of L or greater, towel dispenser including means for defining a top portion, a front wall, a back wall and a pair of side walls of towel dispenser, as well as a bottom portion collectively defining an interior for receiving a stack of C-fold or interfolded towels to be dispensed through aperture, bottom portion of towel

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dispenser defining elongated bottom dispensing aperture, dispenser being of the class that are moved forwardly for reloading;
the improvement comprising an adapter plate secured to bottom portion of towel dispenser configured to abridge the length of dispensing aperture to a length L' of from about 80 percent to about 90 percent of transverse length, L, of C-fold or interfolded towels, wherein the adapter plate is pivotally secured to the dispenser to accommodate reloading (c2 L 47-59 ; fig 4-5)
(Re: cl 22) adapter plate is pivotally secured to the sidewalls of the dispenser (c2 L 47-59 ; fig 4-5).

The Bobrick '363 model towel dispenser includes dimensions of a 10.5" dispensing slot at the widest width and a towel magazine capable of holding 11.00" wide towels and further disclosing:

a length L' of from about 80 percent to about 90 percent of transverse length, L, of C-fold or interfolded towels (measured dimension sufficiently close to 90 percent of transverse length L to qualify as being about 90 percent)
(Re: cl 2) the adapter plate is an elongate member with a generally planar medial portion and further comprises a pair of terminal portions projecting outwardly and upwardly with respect to the planar medial portion at each end of adapter plate, such that the terminal portions are upwardly inclined with respect to the medial portion of the plate (Bobrick '361)
(Re: cl 3) elongated dispensing aperture is abridged to a length, L', of about 85 percent of the transverse length L of C-fold or interfolded towels (10.5" dispensing slot at the widest central axis, smaller adjacent the curved edge ends)
(Re: cl 4) the upwardly inclined terminal portions have an angle of inclination of from about 10 to about 30 degrees with respect to the generally planar medial portion of the adapter plate (tangential inclination spans from horizontal to 65 degrees from horizontal)
(Re: cl 5) the upwardly inclined terminal portions have an angle of inclination of about 20 degrees with respect to the generally planar medial portion of the adapter plate (fig 2)
(Re: cl 8) wherein enlarged central portion has a span of at least about twice the span of the restricted terminal portions (.75" to 2.5").

It would have been obvious for the Gettleman et al. retrofit adapter to have dimensions selected from those used in the proven Bobrick 363 towel dispenser because such dispenser has proven itself effective in minimizing multiple dispensed towels and fall through and come up with the instant invention.

(10) Response to Argument

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Use of "about" is permitted as enabling elements in NONCRITICAL elements not used in distinguishing over the prior art. A range in a claim is a closed end limitation of the scope of the claim, determinative of the claim scope, not enablement of the claim elements. This is the only attempt at further limitation in these dependent claims from the base claim is the open ended limitation "about 85", of which the 80-90 percent already is about 85 in a plurality of meanings of the word "about 85". Applicant's attempt at flexible claim scope limitations unduly would leave potential infringers guessing as to whether their devices read on applicant's claims or uncertain regarding how large or small of a towel to be selected would infringe applicant's claims.

Further, 80-90 is certainly surrounding 85 per an alternative reading of about; it is also approximately 85.

The applicant's arguments have been fully considered but they are unpersuasive in overcoming the rejections of Gettlemen et al. in view of the Bobrick model 363 towel dispenser. The magazine is well capable of holding towels exceeding the width by about 10-25% and would have been obvious to one of ordinary skill in the art to place towels of such dimensions in the dispenser. Gettlemen et al. and Bobrick model 363 both disclose a curve having variable angles of inclination which read which encompass applicant's selected angle. The length of slot is sufficiently close to 90% of available towel length to obviate a slot about 80-90% of the towel length.

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Contrary to applicant's assertion, the slot in the Bobrick '363 model dispenser and the Gettlemen et al. dispenser do not extend the entire magazine cavity distance.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/M. E. B./

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